

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 16 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

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COMMISSIONER OF WEALTH-TAX

Versus

MANIBHAI JESHINGBHAI

Appearance:

1. WEALTH TAX REFERENCE No. 16 of 1988
MR TANVISH U BHATT for petitioner.
MR B.D. Karia for Respondent.
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Before setting out the questions referred for our opinion at the instance of the Revenue in respect of

assessment years 1969-70 and 1970-71, we may set out the relevant facts.

2. The assessee is an HUF and the assessee owned property known as 'Prakash Talkies' admeasuring 3214 sq.yds situate in commercial-cum-residential locality. On the valuation date the property was let out to tenant Prakash Talkies at a monthly rent of Rs. 2,640/=. The property was sold to the tenant on 12.3.1970 for a sum of Rs. 5 lakhs. The assessee HUF declared the value of the property at Rs. 3,16,800/= on the basis of valuation report of registered valuer, Mr. G.S. Desai. The Wealth Tax Officer did not accept the valuation and got it verified by a departmental valuation officer who worked out the market value of the property at Rs. 19,52,000/= for the assessment year 1969-70, and at Rs. 20,31,000/= for the assessment year 1970-71. The DVO further adopted the land rent at Rs. 650/- per sq.yd. adopting the rate of interest at 4 1/2% and reversionary factor at 0.4146. The reasons given by the DVO for working out the market value of the property at a figure substantially higher than the valuation placed by the registered valuer, Mr. Desai were that Prakash Talkies was a partnership firm of six persons and all of them were related to one another and were also related to the members of the HUF. Hence, according to the DVO, the tenancy arrangement was a collusive arrangement and the rent charged was much below the normal market rent. The Commissioner of Wealth Tax (Appeals) held that the valuation adopted by the assessee was correct and the Tribunal confirmed that view. Hence, this Reference at the instance of the Revenue.

3. On the basis of the above facts, the following questions have been referred for our opinion:

Assessment Year : 1969-70:

1. "Whether, in law and on facts the Tribunal is right in holding that the valuation of M/s. Prakash Talkies property as adopted by the assessee was correct and the order of the CWT(A) did not call for any interference ?
2. Whether, in law and on facts the conclusion reached by the Tribunal regarding the valuation of the property known as M/s. Prakash Talkies is correct in law and sustainable from the material

on record ?

3. Whether, in law and on facts the Tribunal is right in holding that the reversionary value of the land to the valuation of Hathipura property arrived at on rental method could not be added and thereby upholding the order made by the CWT (A) ?"

Assessment Year: 1970-71 :

4. "Whether, in law and on facts, the Tribunal is right in holding that the valuation of M/s. Prakash Talkies property as adopted by the assessee was correct and the order of the CWT (A) did not call for any interference ?"
5. Whether, in law and on facts, the conclusion reached by the Tribunal regarding the valuation of the property known as M/s. Prakash Talkies is correct in law and sustainable from the material on record ?"

4. We have heard Mr. Tanvish Bhatt, ld. Standing Counsel for the Revenue and Mr. B.D. Karia, learned counsel for the respondent-assessee.

5. Having heard the learned counsel for the parties, we find that the Tribunal has given cogent reasons for accepting the case of the assessee. The property was constructed in or about 1920. The property was let out in the year 1940 at the rate of Rs. 908/= per month as rent for the premises plus Rs. 300/= per month as rent for furniture and fittings under the rent note dated 19th March 1940. Thereafter the property was let out to another tenant Mr. L.M. Chhabda at a monthly rent of Rs. 1,400/- under rent note dated 6.10.1944. Right from the year 1940 and thereafter the property was given for staging dramatic performances and for exhibiting cinema films. The said rent was inclusive of Rs. 870/= per month for rent for the premises and Rs. 570/= per month as rent for the furniture. Thereafter under rent note dated 2nd May 1962, the property was let out to the present tenant M/s. Prakash Talkies at a monthly rent of Rs. 2,273/= comprising of Rs. 1,773/= as monthly rent for the premises and Rs. 500/= as monthly rent for furniture. The rent was thereafter revised to Rs. 2,640/= which was the prevailing rent for the assessment years under consideration.

6. The Tribunal considered the provisions of the Bombay Rents, Hotel and Lodging House Rent Control Act, 1947, providing for fixation of standard rent on the basis of rent on the relevant date, that is 1.9.1940 and the restrictions contained in the said Act against enhancement of rent beyond the standard rent. The Tribunal therefore found that notwithstanding the close relations between the members of the assessee HUF and the partners of the tenant firm, the very fact that the monthly rent was fixed at Rs. 2,640/= in the year 1969-70 even though the standard rent prevailing in 1940 was only Rs. 908/= per month, was sufficient to dispel the suspicion about collusive nature of tenancy for the property. The Tribunal, therefore, held that the DVO was not justified in castigating the tenancy as collusive and that DVO was also not justified in taking into consideration the profits of the partnership firm for the purpose of determining the market value of the property in question. The Tribunal further held that once the valuation arrived at by the registered valuer on the basis of the monthly rent being paid by the tenant to the assessee firm was found to be reasonable market value, the same had to be treated as the basis for determining market value of the building as well as the land on which the building was situate and there was no justification for adding the value of the land by capitalising the reversionary interest in the land.

7. Having carefully gone through the judgment of the Tribunal, we are of the view that the Tribunal did not commit any error in law in holding that the valuation of M/s. Prakash Talkies property as adopted by the assessee was correct and that the order of the CWT (Appeals) did not call for any interference, because the conclusion reached by the Tribunal was sustainable on the basis of the material on record.

8. In view of the above discussion, our answers to the first 2 questions for the assessment year 1969-70 and also both the questions for assessment year 1970-71, i.e., questions No. 1, 2, 4 and 5 are in the affirmative, that is in favour of the assessee and against the Revenue.

9. Coming to the last question, that is question No.3 for the assessment year 1969-70, the Tribunal relied on the decision of the Calcutta High Court in the case of CIT vs. Smt. Ashima Sinha, 116 ITR 26. This Court also had an occasion to consider this question in Wealth Tax Reference No. 50 of 1987 decided on 23rd October 2001

and also in WTR No. 17 of 1987 decided on 25.9.2001. After considering the decision of the Calcutta High Court in Smt. Ashima Sinha (Supra), this Court agreed with the view expressed by the Calcutta High Court in the aforesaid decision that when the value of the property consisting of building with land is taken on the basis of the rental method, such value includes the value of the land as well as the building taken together and, therefore, the value of the land cannot be again added by adding the reversionary value of the land.

10. In view of the above discussion, our answer to question No.3 is also in the affirmative, that is in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]